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SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

January 8, 1992

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The Honorable William Reilly Administrator The Environmental Protection Agency

Dear Administrator Reilly:

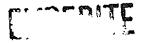
This morning Arizonans were greeted with the news that a landfill on the Salt River Pima-Maricopa reservation had been damaged and was spilling garbage into the nearby Salt River. As disturbing as this news was, I was even more disturbed by the quote attributed to the EPA spokesperson who said that the EPA "has no authority over tribal lands." That statement is not only false, but it is in direct contravention with the policy memorandum you issued to the Agency last year.

In the July 10, 1991 memorandum, you reaffirmed your commitment to EPA's Indian policy and also endorsed a policy paper prepared by Region VIII on the issue of EPA/State/Tribal Relations.

I applaud your efforts to strengthen and support efforts between tribal and state governments to coordinate and cooperate on environmental quality issues. Unfortunately, despite your personal effort to increase awareness as well as to implement the EPA Indian policy, there remain personnel—in this case in Region IX— who hold the view that the EPA has no authority to ensure environmental quality on Indian lands. You and I know that view is absolutely false. In fact, the policy paper you endorsed and attached to your July memorandum states in pertinent part:

The Agency will, in making decisions on program authorization and other matters where jurisdiction over reservation pollution sources is critical, apply federal law as found in the U.S. Constitution, applicable treaties, statutes and federal Indian law. Consistent with the EPA Indian Policy and the interests of administrative clarity, the Agency will view Indian reservations as single administrative units for regulatory purposes. Hence, as a general rule, the Agency will authorize a tribal or state government to manage

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reservation programs only where that government can demonstrate adequate jurisdiction over pollution sources throughout the reservation. Where, however, a tribe cannot demonstrate jurisdiction over one or more reservation sources, the Agency will retain enforcement primacy for those sources. Until EPA formally authorizes a state or tribal program, the Agency retains full responsibility for program management. Where EPA retains such responsibility, it will carry out its duties in accordance with the principles set forth in the EPA Indian Policy (Emphasis added).

I am advised that the federal courts have consistently ruled that EPA has full enforcement authority in the absence of a delegation to a tribe or a state. I would appreciate it if you would once again advise EPA personnel of their responsibilities for environmental quality on Indian lands, both before and after an approved Indian program has been put in place.

In addition, I want to request that your office direct Region IX personnel to render all appropriate assistance to the Salt River Pima-Maricopa Indian Community in its efforts to correct the problems with the reservation landfill. I would appreciate being kept informed of the Agency's efforts in this matter.

Sincerely,

United States Senator

Note to: Dev

From:

Judik ko

Re:

salt River

Attached is a copy of a control I received from Mc Cain about the problem at salt River. After discussing this with Mike, we decided to get imput from R9 so a consolidated response could be prepared. I also called R9 (Jeff Scott) to advise him and discuss the situation.

According to Jeff, trash from a commercial landfill on the Salt River res is washing into the river (which flows into Phoenix) after a controlled release from a dam upstream. The landfill was sited in a floodplain and this situation has occurred before. The wash is expected to continue as heavy snows have neccessitated dam releases. After the river dries up, trash remains scattered on the ground over a wide area.

Jeff said that his staff was interviewed at length by a reporter about Salt River and that what McCain alleges was a misquote. Jeff is aware of the problem at Salt River and would response to our request for imput into the control.

Meanwhile, Martin Topper (OFA) called to inform me that he had been contacted by a member of McCain's staff at home last night about the situation. McCain wants immediate EPA action/answers as this has received a lot of press in the Phoenix area. (Also, McCain is up for reelection and the incident is in his district).

Martin advised the staffer about EPA's enforcement authorities under RCRA, Superfund and water; suggested IHS/BIA might be potential sources of funding for landfill closure/building a new landfill; and (here's the kicker), AND offered to send Bill Wilcox (a R9 SEE) out TODAY to visit and evaluate the site. (Bill is a former FEMA head; in fact, he was McGraw's boss at one time). So, Bill is meeting with the State this am; with the Tribe this pm and will coordinate his activities with R9, BIA and IHS.

Martin then suggested that the Senator might want to contact the RA in R9.

Reportedly, the State is undertaking its own investigation as there is the potential of hazardous/toxic waste releases from the landfill. According to Martin, we may, then, have a potential RCRA "C" violation or emergency response situation as well. He also relayed this info to the staffer.

I told Martin how important it is that Bill coordinate his activities with the program offices. He assured me that he will tell Bill to do so.

I will be leaving for Cherokee late this am and will be back in the office on Friday. If you need me, leave a message on my voice mail as I check it regularly when I am away.

I have left a message for Jeff to call me as soon as he comes in today. In case I miss him, I'm faxing him a copy of this letter as well.

cc: Truett

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